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SPECIAL CRIMINAL APPLICATION No. 219 of 1996

DATE OF DECISION : 04-03-1996

For Approval and Signature :

THE HON'BLE MR. JUSTICE K.J VAIDYA

AND

THE HON'BLE MR. JUSTICE M.H KADRI

BHAGWANDAS M TANWAR

VS.

SATISH R SAINI

& ANR.

1. Whether Reporters of Local Papers may be
allowed to see the judgment ? YES

2. To be referred to the Reporter or not ? YES

3. Whether their Lordships wish to see the fair copy
of the judgment ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or
any other order made thereunder ? NO

5. Whether it is to be circulated to the Civil

Judge ? NO

Mr. Brijendra Prasad, learned advocate for the Petitioner.

Respondent No. 1 : served

Mr. S.T Mehta, learned APP for Respondent-State

CORAM : K.J VAIDYA & M.H KADRI, JJ.

04-3-1996

ORAL JUDGEMENT

Bhagwandas Tanwar, by this petition under Article 226 of the Constitution of India, has moved this Court inter alia praying for the issuance of the writ of Habeas Corpus on the alleged ground that his wife Smt. Jagruti with whom he has lawfully married on 24-11-1994, was illegally taken away from his house in his absence by the respondent No. 1 Satish R Saini who happens to be the brother of Smt. Jagruti.

2. When this matter came-up for admission before this Court on 28-2-1996, the following order was passed :-

" Notice returnable on 4-3-1996. Mr. S.T Mehta, learned APP waives service of notice on behalf of Respondent No. 2. Direct service to Respondent No. 1 permitted. On the aforesaid returnable date, Respondent No. 1 shall produce Jagruti Saini before his Court at 11.00 A.M. "

3. In response to our aforesaid Notice, Respondent No. 1 - Satish R Saini has appeared before this Court alongwith his Sister - Smt. Jagrutiben. We have recorded the statement of Jagrutiben in the open court. On reading out the memo of petition, she has emphatically denied each and every allegation made therein except the one that she is lawfully married wife of the petitioner. According to her, she had of her own gone with her brother Satish to Ahmedabad as her husband i.e., Petitioner who is in habit of consuming liquor, was often beating her. It is her further case that this fact was reported by the neighbours of her family members to Satish her brother and it was thereupon only that he (respondent No. 1) came to Deesa to take her to parental home under the pretext that her mother was sick ! It was under these circumstances that Smt. Jagruti left her in-laws' house. She has also

stated before us that she has filed Maintenance Application under Section 125 of Criminal Procedure Code, 1973 for maintenance of herself and her minor female child and also a complaint under Section 498-A of the Indian Penal Code against the petitioner, her husband which is pending before the learned Magistrate. We have indeed no reason to disbelieve her statement recorded before us in the open Court. However, these material particulars appears to have been suppressed in the petition !!

4. It is very clear that the petitioner has suppressed the material fact regarding the maintenance application and the complaint filed against him, which is pending before the learned Magistrate. It is also very clear that absolutely false, frivolous, vexatious and irresponsible allegations have been levelled against the respondent No. 1 - Satish Saini who is none other than the real-brother of Smt. Jagruti. In this view of the matter, the Court has indeed no doubt that the petitioner by making us issue the notice of Habeas Corpus against the respondent No. 1 has clearly abused the process of law. The petitioner ought to have known that court forum is not a place to wreck personal vengeance and satisfy personal vendetta by abusing its process. Such things can never be permitted and accordingly lightly countenanced. In that view of the matter, not only we have no alternative but to discharge the notice against the Respondent No. 1 but while doing the same the petitioner needs to be taught lesson to the effect that irresponsibly playing with powers of the Court, is as good as playing with open electric wire which permits of no mistake by imposing cost.

5. In the result, this petition fails and the same is dismissed with costs of Rs.2,500/= . Out of Rs. 2,500/= deposited by the petitioner before this Court on or before 11th March, 1996, a sum of Rs. 2,000/= be given to Smt. Jagrutiben. Office is directed to issue a cheque in the name of Jagrutiben on she being identified by her learned advocate of the respondent. Office is further directed to give remaining sum of Rs. 500/= to the Gujarat State Legal Aid Committee.

6. While parting, it shall not be out of place to order that so far as the maintenance proceedings are concerned, the learned Magistrate shall expedite the proceedings and will join the Manager of Digvijay Cement Factory, Kaligam as a necessary party to the said proceedings and at the time of passing of the order for maintenance if the Court reaches to the conclusion that she has been neglected by her husband, while awarding the maintenance amount, shall direct the Manager, Digvijay Cement Factory to first deduct the maintenance amount from the salary of her husband and thereafter to pay him salary; as decided by

this Court in a decision rendered in the case of Ms. Shilpa B Shah versus Bansilal Shah, reported in 1993 (1) GLH page 753 also pointing him out that non-compliance of the order shall amount to the contempt of Court.

Prakash*

STATEMENT OF JAGRUTIBEN

My name is Jagruti. My father's name is Ramchandra. I am aged 27 years. I have studied upto Std-XII. I know Bhagwandas M Tanwar. He is my husband. I was married with him two years back and as a result of which I have a female child named Prarthna. Since my husband was in habit of consuming liquor and was often beating me, it was not possible for me to live with him. Because of these reasons, our neighbours had telephoned my brother namely Satish R Saini to come to Deesa and take me away. That my brother came to Deesa and informed my father-in-law and mother-in-law that since Rampiyariben (ie., my mother) was sick, at least for one day Jagruti be sent alongwith him. Accordingly, I was permitted to go. As a matter of fact, my mother was not sick and that was the only excuse under which I was taken to my parental house. I do not want to go to my husband's house as he is ill-treating me. After returning to my parents home, I had submitted Maintenance Application under Section 125 of the Criminal Procedure Code, which is pending before the learned Judge. I have also filed a complaint against my husband for cruelty, under Section 438 of the IPC. The allegations made in the petition are totally false. As I have lost confidence regarding my safety, I do not want to return to my husband's house.

Before us.,

(K.J Vaidya, J.) (M.H Kadri, J.)

04-03-1996